A

Pendakwa Raya lwn Linges a/l Ragunathan dan lain-lain kes

B

MAHKAMAH TINGGI (TEMERLOH) — RAYUAN JENAYAH NO CB-41LB-5–10 TAHUN 2023, CB-41LB-6–10 TAHUN 2023, CB-41LB-7–11 TAHUN 2023, CB-41LB-8–11 TAHUN 2023, CB-41LB-9–11 TAHUN 2023, CB-41LB-10–11 TAHUN 2023 DAN CB-41LB-11–11 TAHUN 2023

ROSLAN MAT NOR H

C

24 MEI 2024

D

Prosedur Jenayah — Pertuduhan — Pertuduhan cacat — Takrifan s 29 Akta Kesalahan-Kesalahan Kecil 1955 ('Akta 336') — Responden-responden dipertuduh di bawah s 29 Akta 336 — Majistret melepaskan dan membebaskan responden-responden atas alasan pertuduhan cacat — Sama ada majistret boleh memerintahkan pelepasan yang membawa kepada pembebasan atas alasan pertuduhan cacat — Apakah inti pati kesalahan di bawah s 29 Akta 336 — Sama ada pertuduhan adalah cacat — Akta Kesalahan-Kesalahan Kecil 1955 s 29 — Kanun Keseksaan ss 379, 411 & 412 — Kanun Tatacara Jenayah ss 158, 173(g), 316(a) & 376

E

F

Responden-responden telah dituduh di bawah s 29 Akta Kesalahan-Kesalahan Kecil 1955 ('Akta 336') atas kesalahan memiliki harta secara fraud iaitu wang yang telah dipindahkan oleh pengadu-pengadu ke dalam akaun bank responden-responden. Namun begitu, majistret telah melepaskan dan membebaskan responden-responden atas alasan bahawa pertuduhan-pertuduhan tersebut adalah cacat. Tidak berpuas hati dengan keputusan tersebut, pendakwa raya telah memfailkan rayuan semasa. Isu-isu yang berbangkit dalam rayuan semasa adalah: (a) sama ada majistret boleh memerintahkan pelepasan yang membawa kepada pembebasan ('A&D') atas alasan pertuduhan cacat; (b) apakah inti pati kesalahan di bawah s 29 Akta 336; dan (c) sama ada pertuduhan dalam kes semasa adalah cacat.

G

H

Diputuskan, membenarkan rayuan perayu, mengenepikan perintah majistret dan mengembalikan kes kepada mahkamah majistret di bawah s 316(a) Kanun Tatacara Jenayah ('KTJ'):

I

(1) Pendakwa raya telah diberikan kuasa untuk mengendalikan pendakwaan di bawah s 376 KTJ. Mahkamah mendapati bahawa peruntukan tersebut adalah peruntukan yang sewajarnya dan pendakwa raya bertanggungjawab untuk membuktikan pertuduhan tersebut melampaui keraguan yang munasabah. Pendakwa raya juga mempunyai budi bicara untuk meminda pertuduhan seperti dinyatakan di bawah s 158 KTJ. Dalam kes semasa, majistret terkhilaf apabila memberikan

perintah A&D bagi pertuduhan yang dikatakan telah cacat. Ini kerana mahkamah majistret tidak mempunyai kuasa untuk memberikan perintah A&D sebelum mendengar keterangan yang dikemukakan. Apa yang boleh dilakukan hanyalah untuk majistret menggunakan peruntukan s 173(g) KTJ iaitu memberikan perintah pelepasan tidak terjumlah kepada satu pembebasan (DNAA) atau menolak pengakuan salah tertuduh dan ditetapkan tarikh untuk perbicaraan bagi pertuduhan yang dikemukakan. Akhirnya, adalah menjadi tugas pendakwaan untuk membuktikan pertuduhan yang dikemukakan kepada responden-responden dalam kes ini (lihat perenggan 14 & 27–28).

(2) Adalah jelas dan nyata bahawa penelitian kepada peruntukan-peruntukan yang berkaitan dengan secara tipuan (*fraudulent*) dan curang (*dishonestly*) iaitu ss 411, 412, 379 Kanun Keseksaan adalah berkaitan dengan kesalahan yang melibatkan harta. Jika dibandingkan dengan s 29 Akta 336, dapat dilihat bahawa s 29 Akta 336 tidak memerlukan pembuktian bahawa tertuduh melakukan perbuatan curang atau penyataan palsu dalam mendapatkan milikan barang-barang tersebut. Apa yang penting ialah barangan tersebut yang berada di dalam milikan seseorang adalah hasil daripada barang curi atau penyataan palsu. Oleh itu, sama ada barang tersebut merupakan wang yang berada dalam akaun atau barang yang boleh dikendalikan secara fizikal tidak mengubah kedudukan s 29 Akta 336 jika barang tersebut adalah tergolong dalam barang harta curi atau diperolehi secara tipuan (lihat perenggan 55).

(3) Adalah jelas dan nyata bahawa apabila pengadu memasukkan wang tersebut ke dalam akaun responden-responden maka pengadu telah mengakibatkan dirinya kehilangan salah (*wrongful loss*) dan telah memberikan kedapatan salah (*wrongful gain*) kepada responden-responden. Wang tersebut telah secara curang diperolehi oleh responden-responden dalam akaun mereka. Adalah menjadi tanggungjawab responden-responden untuk menjelaskan kepada mahkamah bagaimana wang tersebut boleh berada di dalam akaun mereka. Mahkamah mendapati ini sudah memadai untuk maksud s 29 Akta 336. Oleh itu tidak timbul isu sama ada wang dalam akaun tersebut adalah tergolong sebagai harta atau tidak. Ini kerana wang tersebut telah dimiliki secara tipuan dan berada dalam akaun responden-responden yang menyebabkan pengadu telah mengalami kehilangan salah (*wrongful loss*). Mahkamah mendapati ini sudah memadai bagi memenuhi kehendak s 29 Akta 336 (lihat perenggan 56).

(4) Jika takrifan yang ketat berkenaan s 29 Akta 336 dibuat dengan memutuskan bahawa wang bukannya harta dan mengambil kira prinsip hubungan pelanggan dan bank yang menjadi asas kepada takrifan wang

dalam kes *Folley v Hill* [1843–60] All ER Rep 16 tersebut, ia akan bertentangan dengan kepentingan awam apabila penjenayah boleh menggunakan akaun-akaun individu yang lain untuk dimasukkan wang-wang yang diperolehi secara tipuan atau curang dan tiada apa-apa tindakan boleh diambil kepada pemegang akaun tersebut. Ini akan mengembangbiakkan kegiatan jenayah penipuan yang melibatkan akaun bank. Ini perlu diambil kira demi memastikan kesejahteraan masyarakat terpelihara di samping tidak memudaratkan keadilan kepada responden-responden (lihat perenggan 60).

(5) Mahkamah telah meneliti pertuduhan yang dikemukakan kepada responden-responden dalam kes semasa dan mendapati bahawa tarikh kejadian, tempat kejadian, kesalahan yang dilakukan, dan jumlah yang terlibat telah dinyatakan. Selain itu, pertuduhan tersebut juga menyatakan harta-harta tersebut diperolehi secara fraud di mana responden-responden tidak dapat memberikan penjelasan yang munasabah bagaimana wang tersebut berada dalam akaun mereka. Ini pada hemat mahkamah sudah memenuhi kehendak KTJ berkaitan dengan pertuduhan tersebut. Mahkamah berpendapat tiada apa-apa kecacatan dalam pertuduhan tersebut (lihat perenggan 61).

[English summary

The respondents were charged under s 29 of the Minor Offences Act 1955 ('Act 336') for the offence of fraudulent possession of property ie, the money that had been transferred by the complainants into the bank account of the respondents. Nevertheless, the magistrate discharged and acquitted the respondents on the grounds that the charges were defective. Dissatisfied with the decision, the prosecutor filed the present appeal. The issues that arose in the present appeal were: (a) whether the magistrate could order discharge amounting to acquittal ('A&D') on the ground of a defective charge; (b) what were the elements of the offence under s 29 of Act 336; and (c) whether the charge in the present case was defective.

Held, allowing the appellant's appeal, setting aside the magistrate's order and reverting the case to the magistrate court under s 316(a) of the Criminal Procedure Code ('the CPC'):

(1) The public prosecutor had been given the power to conduct the prosecution under s 376 of the CPC. The court found that the provision was a proper provision, and the prosecutor was responsible for proving the charge beyond reasonable doubt. The public prosecutor also had the discretion to amend the charge as stated under s 158 of the CPC. In the present case, the magistrate erred in granting an A&D order for the allegedly defective charge. This was because the magistrate court did not have the power to grant an A&D order before hearing the evidence presented. All that could be done was for the magistrate to use the

provisions of s 173(g) of the CPC, which was to give an order of discharge not amounting to acquittal (DNAA) or to reject the accused's guilty plea and set a date for trial for the charges presented. Finally, it was the duty of the prosecution to prove the charges brought against the respondents in this case (see paras 14 & 27–28).

(2) It was plain and clear from the scrutiny of the provisions related to 'fraudulent' and 'dishonestly', namely ss 411, 412, 379 of the Penal Code, that such provisions related to offences involving property. When compared with s 29 of Act 336, it could be seen that s 29 of Act 336 did not require proof that the accused committed dishonest acts or false statements in obtaining possession of the goods. What was important was that the goods in one's possession were the result of stolen goods or false statements. Therefore, whether the item was money in the account or an item that could be physically handled did not change the position of s 29 of Act 336 if the item was classified as stolen property or fraudulently obtained (see para 55).

(3) It was plain and clear that when the complainant transferred the money into the respondents' accounts, the complainant had caused himself a wrongful loss and had given wrongful gain to the respondents. The money was dishonestly obtained by the respondents in their accounts. It was the responsibility of the respondents to explain to the court how the money could be present in their accounts. The court found that this was sufficient for the purposes of s 29 of Act 336. Therefore, there was no issue as to whether the money in the account was classified as property or not. This was because the money had been fraudulently owned and was in the respondents' accounts causing the complainant to suffer a wrongful loss. The court found that this was sufficient to fulfil the requirements of s 29 of Act 336 (see para 56).

(4) If strict interpretation regarding s 29 of Act 336 was made by deciding that money was not property and taking into account the principle of customer and bank relationship which was the basis of the interpretation of money in the case of *Folley v Hill* [1843–60] All ER Rep 16, such interpretation would be against the public interest when criminals could use other individual accounts to deposit money obtained fraudulently or dishonestly and no action could be taken against the account holder. This would increase fraudulent criminal activity involving bank accounts. This ought to be considered to ensure that the well-being of the community was preserved while not harming justice for the respondents (see para 60).

(5) The court had examined the charges presented to the respondents in the present case and found that the date of the incident, the place of the incident, the offence committed, and the amount involved had been stated. In addition, the charges also stated that the properties were

obtained fraudulently where the respondents could not provide a reasonable explanation as to how the money existed in their accounts. This in the opinion of the court had fulfilled the requirements of the CPC in relation to the charge. The court held that there was no defect in the charge (see para 61).]

Kes-kes yang dirujuk

A-G of Hong Kong v Chan Nai-Keung [1987] 1 WLR 1339, PC (dirujuk)
Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v PP [2014] 6 MLJ 831; [2014] 9 CLJ 289, MP (dirujuk)
Anuar bin Ghazali v PP [2021] 9 MLJ 409; [2021] 2 CLJ 245, MT (dirujuk)
Arunasalam Thevar v PP [1956] 1 MLJ 109 (dirujuk)
Chu Chee Peng v PP [1973] 2 MLJ 35, MP (dirujuk)
Dilworth v Stamps Comrs [1899] AC 99, PC (dirujuk)
Folley v Hill and others [1843–60] All ER Rep 16, HL (dirujuk)
Harpajan Kaur a/p Delib Singh v PP [2021] 7 MLJ 678, MT (dirujuk)
Karpal Singh & Anor v PP [1991] 2 MLJ 544; [1991] 1 CLJ Rep 183, MA (dirujuk)
Mok Chee Cheong v PP [2022] MLJU 191, MT (dirujuk)
Moss v Hancok [1899] 2 QB 111 (dirujuk)
Pendakwa Raya lwn Mohd Redzwan bin Md Yatim dan lain-lain [2023] MLJU 1538; [2023] 1 LNS 1354, MT (dirujuk)
PP v Mahiaddin bin Md Yasin [2024] 6 MLJ 1; [2024] CLJU 873, MR (dirujuk)
PP v Zainuddin & Anor [1986] 2 MLJ 100, MA (dirujuk)
R v Preddy and others [1994] Lexis Citation 3747, MR (dirujuk)
Rosli bin Yusof v PP [2021] 4 MLJ 479, MP (dirujuk)
Torkington v Magee [1902] 2 KB 427 (dirujuk)

Undang-undang yang dirujuk

Akta Kesalahan Kecil 1955 s 29, 29(4)
Kanun Keseksaan ss 378, 379, 410, 411, 412
Kanun Tatacara Jenayah ss 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 173, 173(f), 173(g), 254, 254(3), 316(a), 376
Theft Act 1968 [UK] s 15

Syed Ahmed Khabir bin Abdul Rahman (Ain-Nur 'Amiyerra Awod Abdullah bersamanya) (Jabatan Peguam Negara) bagi pihak perayu.
Khairul Anuar bin Abu Hasan Ashaari (Ahmad Zahid bin Abu Hashim bersamanya) (Khairul Anuar, Mazieera & Assoc) bagi pihak responden.

Roslan Mat Nor H:

PENDAHULUAN

[1] Ini adalah rayuan terhadap keputusan majistret yang telah memutuskan bahawa responden-responden dibebas dan dilepaskan. Responden-responden telah dituduh bagi kesalahan di bawah s 29 Akta Kesalahan Kecil 1955 seperti berikut:

Kes CC-83–303–10/2023

Bahawa kamu pada tarikh 11hb Jun 2020 jam lebih kurang 5:53 petang sehingga 6:41 petang, bertempat di No 32, Jalan Tan Tiong, Dalam Daerah Raub, Dalam Negeri Pahang, telah didapati wang di dalam akaun bank CIMB Bank bernombor 7070616220 milik kamu sejumlah wang RM10,000.00 milik Liew Tze Hau KPT No 901210–06–5733 disyaki harta diperolehi secara frod dimana kamu tidak dapat memberi penjelasan yang munasabah bagaimana duit tersebut berada dalam akaun milik kamu. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah Seksyen 29(1) Akta Kesalahan-Kesalahan Kecil 1955 (Akta 336).

Bahawa kamu pada tarikh 5 Mac 2021 jam lebih kurang 1447Hrs, bertempat di Maybank Cawangan Raub Jalan Lipis, di dalam Daerah Raub, di dalam Negeri Pahang, telah didapati wang di dalam akaun Maybank No. Akaun milik kamu sejumlah wang RM700.00 milik Mazlinda binti Joni KPT No 961102–06–5108 disyaki harta diperolehi secara frod dimana kamu tidak dapat memberi penjelasan yang munasabah bagaimana duit tersebut berada dalam akaun milik kamu. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah Seksyen 29(1) Akta Kesalahan-Kesalahan Kecil 1955 (Akta 336).

Kes CC-83–314–10/2023

Bahawa kamu pada tarikh 20/03/2020 di antara jam lebih kurang 10.42 pagi hingga jam lebih kurang 11.03 pagi, bertempat di RHB Bank Cawangan Raub, di dalam Daerah Raub, di dalam Negeri Pahang Darul Makmur, telah didapati wang di dalam akaun RHB Bank No. 10608500108185 milik kamu sejumlah wang RM7,500.00 milik New Siew Yoong (No K/P: 680206-06-5064) disyaki harta diperolehi secara frod dimana kamu tidak dapat memberi penjelasan yang munasabah bagaimana wang tersebut berada dalam akaun bank milik kamu. Oleh itu, kamu telah melakukan kesalahan di bawah seksyen 29(1) Akta Kesalahan Kecil 1955 yang boleh dihukum di bawah seksyen yang sama.

Bahawa kamu pada tarikh 17hb Februari 2023, jam lebih kurang 12:44 petang bertempat di CIMB Bank Cawangan Raub, dalam Daerah Raub, di dalam Negeri Pahang, telah didapati wang di dalam akaun bank CIMB Bank bernombor 7642899347 milik kamu sejumlah wang RM5,000.00 milik Chin Tow Onn KPT: 681025–06–5027 disyaki harta diperolehi secara frod dimana kamu tidak dapat memberi penjelasan yang munasabah bagaimana duit tersebut berada dalam akaun milik kamu. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah Seksyen 29(1) Akta Kesalahan-Kesalahan Kecil 1955 (Akta 336).

Kes CC-83–321–10/2023

Bahawa kamu pada 04/09/2019 jam lebih kurang 12.05 tengahari, bertempat di Hong Leong Bank Cawangan Raub, di dalam daerah Raub, di dalam negeri Pahang Darul Makmur, telah didapati wang di dalam akaun Hong Leong Bank No 5801041737 milik kamu sejumlah wang RM5,000.00 milik Chai Chin Yuan (No K/P: 840915-06-5163) disyaki harta diperolehi secara frod dimana kamu tidak dapat memberi penjelasan yang munasabah bagaimana wang tersebut berada di dalam akaun milik kamu. Oleh itu, kamu telah melakukan kesalahan di bawah seksyen 29(1) Akta Kesalahan Kecil 1955 yang boleh dihukum di bawah seksyen yang sama.

Bahawa kamu pada tarikh 20/02/2023 jam lebih kurang 1.37 tengahari, bertempat di No. T-4 Kampung Baru Sempalit, di dalam Daerah Raub, di dalam Negeri Pahang Darul Makmur, telah didapati wang di dalam akaun CIMB Bank No 7642899347 milik kamu sejumlah wang RM3,000.00 milik Choong Chiew Fei (No K/P: 791028-14-5070) disyaki harta diperolehi secara frod dimana kamu tidak dapat memberi penjelasan yang munasabah bagaimana wang tersebut berada dalam akaun bank milik kamu. Oleh itu, kamu telah melakukan kesalahan di bawah seksyen 29(1) Akta Kesalahan Kecil 1955 yang boleh dihukum di bawah seksyen yang sama.

Kes CC-83–324–10/2023

Bahawa kamu pada tarikh 20/03/2023 jam lebih kurang 4.22 petang, bertempat di No. 40 Taman Intan, di dalam Daerah Raub, di dalam Negeri Pahang Darul Makmur, telah didapati wang di dalam akaun CIMB Bank No 7627059038 milik kamu sejumlah wang RM4,300.00 milik Ho Ying Quan (No K/P: 030918-06-0013) disyaki harta diperolehi secara frod dimana kamu tidak dapat memberi penjelasan yang munasabah bagaimana wang tersebut berada dalam akaun bank milik kamu. Oleh itu, kamu telah melakukan kesalahan di bawah seksyen 29(1) Akta Kesalahan Kecil 1955 yang boleh dihukum di bawah seksyen yang sama.

[2] Alasan majistret dalam memutuskan sedemikian ialah disebabkan pertuduhan yang cacat. Ini berdasarkan kepada keputusan *Mok Chee Cheong v Public Prosecutor* [2022] MLJU 191, *Harpajan Kaur a/p Delib Singh v Public Prosecutor* [2021] 7 MLJ 678 dan *Pendakwa Raya lwn Mohd Redzwan bin Md Yatim dan lain-lain* [2023] MLJU 1538; [2023] 1 LNS 1354. Ia terserlah di dalam nota keterangan.

[3] Alasan penghakiman bagi kes ini adalah terpakai kepada kepada kesemua kes dalam rayuan ini. Ia adalah disebabkan isu yang dibangkitkan adalah sama untuk kesemua kes. Alasan penghakiman dan keputusan kes rayuan ini adalah terpakai kepada kesemua kes CB-41LB-5–10 Tahun 2023, CB-41LB-6–10 Tahun 2023, CB-41LB-7–11 Tahun 2023, CB-41LB-8–11 Tahun 2023, CB-41LB-9–11 Tahun 2023, CB-41LB-10–11 Tahun 2023 dan CB-41LB-11–11 Tahun 2023.

FAKTA KES

[4] Dalam alasan penghakiman majistret telah dinyatakan bahawa rayuan ini adalah melibatkan isu undang-undang yang sama, maka majistret telah meringkaskan fakta kes bagi Kes CC-83–303–10 Tahun 2023 untuk kesemua kes iaitu seperti berikut:

> [10] Pada 3 Jun 2020 jam lebih kurang 1600hrs ketika pengadu berada di rumah sambil melayari Facebook, pengadu telah terlihat iklan pinjaman wang dari Sykt Professional-Easy Loan. Pengadu telah tinggalkan nombor telefon pengadu di ruangan komen.
>
> [11] Selepas itu, pengadu menerima mesej melalui aplikasi Whatsapp dari No 011–27186091 dengan nama Ryan yang menawarkan pinjaman kepada pengadu.
>
> [12] Pengadu berminat membuat pinjaman sebanyak RM30,000 dan telah berikan dokumen peribadi seperti kad pengenalan dan borang cukai pendapatan.
>
> [13] Pada 11 Jun 2020 jam 1150hrs Ryan telah beritahu pengadu yang pinjaman pengadu telah lulus dan meminta pengadu membayar wang insurans sebanyak RM3,260.
>
> [14] Pada 11 Jun 2023 jam 1753hrs pengadu telah pindahkan wang pengadu sebanyak RM10,000 ke akaun yang lain yang diberikan oleh Ryan iaitu akaun CIMB Bank No 7070616220 atas nama Linges a/l Ragunathan. Pengadu kemudian cuba hubungi penama Ryan namun gagal. Pengadu merasa telah tertipu. Seterusnya pengadu membuat repot sebagaimana Raub 1640/20.
>
> [15] Hasil siasatan yang di]alankan mendapati OKT merupakan pemilik akaun CIMB Bank No Akaun 7070616220 yang mana telah digunakan oleh pengadu untuk masukkan wang. Berdasarkan penyata akaun CIMB Bank OKT, terdapat tiga transaksi kemasukan wang pada 11 Jun 2020 berjumlah RM10,000.
>
> [16] OKT juga tidak dapat memberikan penjelasan yang memuaskan tentang wang berjumlah RM10,000 yang dimasukkan ke dalam akaun CIMB Bank No Akaun 7070616220 milik OKT. Wang tersebut disyaki didapati secara frod dan OKT tidak dapat memberikan penjelasan yang dengan memuaskan bagaimana wang tersebut diperoleh.

ANALISA

[5] Isu dalam rayuan ini pada hemat mahkamah ialah:

(a) adakah majistret boleh memerintahkan kes ini dilepaskan yang membawa kepada pembebasan (A&D) atas alasan pertuduhan cacat;

(b) apakah intipati kesalahan di bawah s 29 Akta Kesalahan Kecil 1955; dan

(c) adakah pertuduhan dalam kes ini adalah cacat.

Isu (a)

[6] Peruntukan berkenaan pertuduhan telah dinyatakan di bawah s 152 hingga s 171 KTJ. Ini bermakna pertuduhan yang dikemukakan di mahkamah adalah tertakluk di bawah peruntukan-peruntukan tersebut.

[7] Persoalannya adakah wajar apabila suatu pertuduhan itu cacat maka mahkamah boleh membebaskan dan melepaskan tertuduh-tertuduh.

[8] Tatacara pertuduhan dikemukakan dinyatakan di bawah s 152, 153, 154, 163, 164, 166 dan 170 Kanun Tatacara Jenayah ('KTJ'). Di samping itu s 156 meliputi kesan kesilapan pertuduhan. Seksyen 158 KTJ pula memperuntukkan berkenaan dengan pindaan pertuduhan.

[9] Mahkamah yang mendengar perbicaraan telah diberikan budi bicara di bawah s 173(g) KTJ untuk memberikan pelepasan tidak terjumlah kepada satu pembebasan (DNAA) kepada tertuduh sekiranya mendapati bahawa tuduhan yang dikemukakan terhadap tertuduh adalah tidak berasas. Seksyen 173(g) KTJ adalah seperti berikut:

> (g) Nothing in paragraph (f) shall be deemed to prevent the Court from discharging the accused at any previous stage of the case if for reasons to be recorded by the Court it considers the charge to be groundless.

[10] Tujuan kewujudan s 173(g) KTJ ini ialah untuk membolehkan mahkamah rendah semasa mendengar suatu pertuduhan jenayah berpendapat sebenarnya tiada alasan untuk pertuduhan tersebut boleh diteruskan. Jika ini berlaku maka mahkamah rendah boleh menggunakan s 173(g) KTJ tersebut. Ini telah dinyatakan dalam kes *Chu Chee Peng v Public Prosecutor* [1973] 2 MLJ 35 seperti berikut:

> Thus, when the whole of s 173 is viewed in logical order, it will be seen that para (g) has a good raison d'être for its interposition between para (f) and (h) et seq. It is to be remembered that the procedure in s 173 is for summary trials. There are constantly cases coming up in subordinate courts where the very corner stone in the prosecution case collapses at an early stage for a variety of reasons. In that event, should the magistrate continue in the profitless labour of hearing the rest of the prosecution to the bitter end, whilst realising that at the close of the prosecution he would surely have to pronounce a verdict of acquittal? Without the express powers given him by para (g) the futile exercise is inevitable. Therefore the paragraph provides that:
>
> > (g) Nothing in para (f) shall be deemed to prevent the court from discharging the accused at any previous stage of the case if for reasons to be recorded by the court it considers the charge to be groundless.
>
> But magistrates may occasionally be over-hasty; they may have misdirected themselves or fallen into error in other ways, when deciding to dismiss a case without wasting any more time on the prosecution. Accordingly they are required to state their reasons for so doing and, lest their error lead to irremediable

consequences, they are authorised only to 'discharge' the accused; not, be it noted, to 'acquit' him. Thus the plea of autrefois acquit under s 302(i) would not be available to a person discharged who is not at the same time acquitted at the previous trial for the same offence. Sub-section (v) of s 302 goes on to state expressly that 'the dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section'. Hence the discharge of the applicant in the instant case by the first President cannot, in our opinion, be pleaded as a bar to the second prosecution.

[11] Adalah menjadi prinsip undang-undang yang jelas bahawa mahkamah tidak boleh melepaskan dan membebaskan seseorang tertuduh tanpa mendengar keterangan yang dikemukakan. Ini telah dinyatakan oleh Mahkamah Persekutuan dalam kes *Public Prosecutor v Zainuddin & Anor* [1986] 2 MLJ 100 seperti berikut:

Since the Attorney-General has this power exercisable at his discretion, it is not for the court to say when the prosecution has to close its case or has to come to an end merely because it is unable to obtain a postponement in order to produce evidence which will prove the offence against the accused, and thus acquit him on the basis of no evidence or on the basis of the evidence thus far produced without waiting for the evidence for which postponement is sought, citing as an authority a burden of proof principle that it is for the prosecution to prove the guilt of the accused. Of course, the prosecution has the duty to do so, but the court has no power to stop the prosecution from performing its duty by acquitting without hearing evidence ...

[12] Berdasarkan kepada penelitian Kanun Tatacara Jenayah menunjukkan bahawa mahkamah tidak boleh memberikan perintah tertuduh dilepaskan yang membawa kepada pembebasan (A&D) di bawah s 173(g) KTJ. Ini bermakna apabila satu pertuduhan jenayah dikemukakan di hadapan mahkamah rendah, perintah melepaskan dan membebaskan tidak boleh diberikan semata-mata disebabkan terdapatnya kecacatan di dalam pertuduhan. Ini adalah disebabkan semasa pertuduhan itu dibacakan tiada keterangan yang dikemukakan bagi membolehkan mahkamah melepaskan dan membebaskan seseorang tertuduh. Ini ditambah pula dengan peruntukan di bawah s 158 KTJ yang memberikan peluang kepada pihak pendakwaan dengan persetujuan mahkamah untuk membuat pindaan kepada pertuduhan tersebut. Mahkamah boleh mengenalpasti kecacatan tersebut dan terpulang kepada pendakwa raya untuk mengambil tindakan yang sewajarnya termasuklah di bawah s 158 KTJ.

[13] Sekiranya pendakwa raya memilih untuk meneruskan pendakwaan tersebut berdasarkan kepada pertuduhan yang dikatakan cacat tersebut maka mahkamah rendah boleh menggunakan budi biara di bawah s 173(g) KTJ untuk mempertimbangkan bahawa pertuduhan tersebut adalah tidak berasas sehingga boleh diberikan perintah pelepasan tidak terjumlah kepada satu pembebasan (DNAA) kes tersebut.

[14] Mahkamah juga boleh untuk meneruskan perbicaraan tersebut berdasarkan kepada pertuduhan dan di akhir perbicaraan mahkamah memerintah tertuduh dilepaskan yang membawa kepada pembebasan (A&D) seperti yang dinyatakan di bawah s 173(f) KTJ. Apa yang jelas ialah mahkamah tidak boleh melepaskan dan membebaskan tertuduh tanpa mendengar keterangan yang dikemukakan oleh pihak pendakwaan.

[15] Sekiranya pihak mahkamah mendapati bahawa sebelum keterangan dikemukakan pihak pendakwaan telah menggunakan budi bicaranya di bawah s 254 KTJ maka ketika itu mahkamah boleh mempertimbangkan untuk kes tersebut diberikan perintah dilepaskan yang membawa kepada pembebasan (A&D) di bawah s 254(3) KTJ. la juga boleh dilakukan sekiranya terdapat beberapa pertuduhan seperti yang diperuntukkan di bawah s 171 KTJ.

[16] Mahkamah berpendapat selain daripada kedudukan di bawah s 254 dan 171 KTJ itu tiada sebarang peruntukan undang-undang yang membenarkan mahkamah rendah melepaskan dan membebaskan seseorang tertuduh tanpa mendengar keterangan yang dikemukakan oleh pihak pendakwaan.

[17] Selain daripada itu sekiranya pihak tertuduh ingin dia dilepaskan dan dibebaskan sebelum keterangan dikemukakan di mahkamah maka permohonan boleh dibuat untuk tuduhan terhadapnya dibatalkan atau alasan bahawa pertuduhan tersebut adalah cacat. Inilah yang berlaku dalam kes *Public Prosecutor v Mahiaddin bin Md Yasin* [2024] 6 MLJ 1; [2024] CLJU 873.

[18] Dalam kes *Karpal Singh & Anor v Public Prosecutor* [1991] 2 MLJ 544; [1991] 1 CLJ Rep 183 telah dinyatakan bahawa mahkamah rendah yang membicarakan kes jenayah tidak mempunyai kuasa untuk melepaskan dan membebaskan tertuduh tanpa mendengar keterangan. Ini dinyatakan seperti berikut:

> ... There is no provision in the Code for striking out proceedings or acquittal without hearing all evidence the prosecution has the capacity to offer, even though postponements are needed. If any party feels that the charge and consequent proceedings are illegal on the face of record, which we feel is rare, his remedy is to take up appropriate proceedings before a High Court to quash the charge and whole proceedings producing evidence to the satisfaction of the trial judge to adopt such a case. It is absurd and against common sense to believe that the Legislature ever expected members of the subordinate judiciary to exercise such vast powers, trespassing into the public prosecutor's area.
>
> On the other hand, as an alternate remedy an aggrieved party may make appropriate representations to the public prosecutor for redress against alleged illegality. Such

instances are not envisaged normally as public prosecutors and their representatives are expected to perform their function diligently, honestly, impartially in the public interest.

[19] Malahan dalam kes *Karpal Singh & Anor* telah dinyatakan bahawa Mahkamah Tinggi mempunyai bidang kuasa untuk membatalkan pertuduhan tersebut. Ini dinyatakan seperti berikut:

... Our considered opinion is that the English doctrine of inherent jurisdiction is hardly applicable in subordinate courts but the High Court may invoke such prerogative powers in rare instances where it is right to do justice to the accused. As an instance of High Court invoking the doctrine of inherent power, we are aware of the instance referred to in *Public Prosecutor v Lee Tin Bau*. The circumstances of the case referred to therein were manifestly different and the counsel's plea was supported by the evidence of the accused and the judge's own investigation. There is hardly any room for transplantation of any English practice or other systems of law in the magistrates court under the Criminal Procedure Code.

[20] Ia juga telah disahkan oleh Mahkamah Persekutuan dalam kes *Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v Public Prosecutor* [2014] 6 MLJ 831; [2014] 9 CLJ 289 seperti berikut:

[25] In the present case both the High Court and the Court of Appeal held that the High Court has inherent power to set aside and quash or stay the charges permanently against the appellant. Historically the doctrine of inherent power which allowed the High Court to prevent an oppressive and mala fide prosecution, abuse of process and to do wrong in the administration of justice has its origin in the English common law ...

[26] ...

[27] Closer to home the above English common law doctrine of inherent jurisdiction found its way and adopted by the Malaysian Courts in the landmark case of the then Supreme Court case of *Karpal Singh & Anor v Public Prosecutor* which as stated earlier prompted the appellant in this case to file the motion before the High Court. The issue now is whether such doctrine of inherent jurisdiction and thus inherent power can be exercised to strike out the charges and to have the appellant acquitted and discharged on those charges.

[21] Malahan dalam kes *Anuar bin Ghazali v Public Prosecutor* [2021] 9 MLJ 409; [2021] 2 CLJ 245 Mahkamah Tinggi telah membenarkan permohonan untuk membatalkan pertuduhan. Ia dilakukan setelah terdapat permohonan di Mahkamah Tinggi untuk pertuduhan dibatalkan.

[22] Apa yang jelas daripada *Karpal Singh*, *Ahmad Zubair Hj Murshid* dan *Anuar Ghazali* terdapat permohonan untuk pembatalan pertuduhan dibuat di Mahkamah Tinggi dan bukannya mahkamah rendah membuat keputusan membatalkan pertuduhan dan membebas serta melepaskan tertuduh. Ini

adalah penting bagi memahami batasan tugasan pendakwa raya dan mahkamah dalam mengendalikan suatu perbicaraan jenayah. Pendakwa raya mempunyai tanggungjawab dan budi bicara untuk mengendalikan kes jenayah tersebut. Sementara mahkamah pula harus memastikan bahawa perbicaraan tersebut dijalankan mengikut prosedur yang ditetapkan.

[23] Dalam konteks mahkamah rendah pematuhan kepada s 173 bagi tujuan perbicaraan ringkas dan peruntukan yang berkaitan dengan pertuduhan seperti yang dinyatakan di bawah Kanun Tatacara Jenayah adalah penting. Mahkamah seharusnya tidak mengambil alih tugas pendakwa raya dalam menentukan pertuduhan tetapi wajar untuk menzahirkan perasaan hormat menghormati di antara pendakwaan dan mahkamah dalam proses perbicaraan jenayah. Ini telah dinyatakan dengan menarik dalam kes *Public Prosecutor v Zainuddin & Anor* oleh Mahkamah Persekutuan:

> If the court considers that a mere discharge does not meet with the justice of the case because the offence by reason of numerous postponements has become trivial and lost its potency and that the case should be disposed of quickly the court should make an order leaving the prosecution with no choice except to discontinue. Perhaps, a short adjournment or a last adjournment should be granted so as to enable the prosecution to make up its mind one way or the other. It might well be that in the end the prosecution may decide to discontinue. *Thus, the co-operation and mutual respect between the bench and the bar in the administration of justice is so important that it should not be undermined.*

[24] Adalah mustahak bahawa perintah DNAA dan A&D tidak boleh diberikan dengan sewenang-wenangnya oleh mahkamah dengan membelakangkan undang-undang di bawah Kanun Tatacara Jenayah. Ia tidak wajar dijadikan sebagai kaedah untuk melupuskan kes bagi mendapatkan gambaran perangkaan penyelesaian kes yang meyakinkan pihak tertentu sehingga menyebabkan berlaku kezaliman dan ketidakadilan kepada proses perbicaraan jenayah. Perintah DNAA dan A&D tersebut haruslah dilakukan dengan kesedaran bahawa perlu mengikut peruntukan undang-undang dan dalam keadaan yang dibenarkan oleh undang-undang. Ini bagi memastikan kelestarian pentadbiran keadilan jenayah di negara ini terpelihara.

[25] Di samping itu adalah tanggungjawab pendakwa raya untuk membuktikan kes bagi satu pertuduhan jenayah. Ini dinyatakan dalam kes *Rosli bin Yusof v Public Prosecutor* [2021] 4 MLJ 479 seperti berikut:

> [45] It is trite law that it is not the duty of the appellant to prove his innocence or to call a particular witness to support his defence (see *Tan Foo Su v Public Prosecutor* [1967] 2 MLJ 19; *Sandra Margaret Birch v Public Prosecutor* [1978] 1 MLJ 72). The law places upon the prosecution the burden to prove guilt of the appellant beyond reasonable doubt and not on the appellant to prove his innocence. Well-entrenched in jurisprudence is the rule that the conviction of the appellant must rest not on the

weakness of the defence but on the strength of the prosecution. This principle is the corner stone of our criminal law.

[26] Penelitian kepada alasan penghakiman menunjukkan bahawa asas kepada keputusan majistret adalah disebabkan pertuduhan yang dikemukakan adalah cacat. Persoalannya adakah disebabkan pertuduhan itu cacat, mewajarkan mahkamah rendah memerintahkan responden-responden dilepaskan yang membawa kepada pembebasan (A&D). Mahkamah berpendapat ia tidak boleh dilakukan.

[27] Berdasarkan kepada penelitian kepada Kanun Tatacara Jenayah, adalah didapati bahawa kerangka undang-undang yang jelas di antara kedudukan pendakwa raya dan mahkamah dalam menjalankan pertuduhan jenayah pendakwa raya telah diberikan kuasa untuk mengendalikan pendakwaan seperti di bawah s 376 KTJ.

[28] Ia pada hemat mahkamah peruntukan yang sewajarnya dan pendakwa raya bertanggungjawab untuk membuktikan pertuduhan tersebut melampaui keraguan yang munasabah. Pendakwa raya juga mempunyai budi bicara untuk menggunakan pindaan kepada pertuduhan seperti dinyatakan di bawah s 158 KTJ. Dalam kes ini mahkamah berpendapat majistret adalah terkhilaf apabila memberikan perintah A&D bagi pertuduhan yang dikatakan telah cacat. Ini adalah disebabkan mahkamah majistret tidak mempunyai kuasa untuk memberikan perintah A&D sebelum mendengar keterangan yang dikemukakan. Apa yang boleh dilakukan hanyalah untuk majistret menggunakan peruntukan s 173(g) KTJ atau menolak pengakuan salah tertuduh dan ditetapkan tarikh untuk perbicaraan bagi pertuduhan yang dikemukakan. Akhirnya adalah menjadi tugas pendakwaan untuk membuktikan pertuduhan yang dikemukakan kepada responden-responden dalam kes ini.

[29] Seterusnya pihak perayu juga berhujah bahawa keputusan majistret yang bersandarkan kepada keputusan *Harpajan Kaur a/p Delib Singh v Public Prosecutor*, *Mok Chee Cheong v Public Prosecutor* dan *Pendakwa Raya lwn Mohd Redzwan bin Md Yatim dan lain-lain* adalah tidak teratur. Pada hemat mahkamah adalah menjadi tanggungjawab mahkamah rendah untuk mematuhi dan mengikuti serta terikat dengan keputusan-keputusan Mahkamah Tinggi. Keputusan yang dibuat berdasarkan keputusan Mahkamah Tinggi tersebut tidak boleh dikatakan tidak teratur melainkan keputusan Mahkamah Tinggi tersebut telah dibatalkan oleh keputusan Mahkamah Rayuan atau Mahkamah Persekutuan. Tindakan mahkamah majistret mematuhi keputusan Mahkamah Tinggi tersebut adalah suatu tindakan yang terpuji dan perlu dihargai. Ia tidak bercanggah dengan prinsip duluan kehakiman yang menjadi asas kepada sistem kehakiman.

[30] Penelitian kepada kes *Harpajan Kaur a/p Delib Singh v Public Prosecutor* adalah menarik apabila YA hakim Mahkamah Tinggi dalam kes tersebut telah memberikan pengamatan yang meransang pemikiran berkenaan pentafsiran s 29 Akta Kesalahan Kecil 1955 berkaitan dengan perkataan harta (*property*), pemilikan (*possession*) dan mana-mana barang (*anything*). Ini dapat dilihat di perenggan [20] sehingga [33] dan membuat kesimpulan yang menarik di perenggan [29] dan [34] seperti berikut:

> [29] The plain and ordinary meaning of a 'thing' as a noun refers to an object (see https://dictionary.cambridge.org/dictionary/english/thing) If the legislators had intended the word 'property' to include both corporeal and incorporeal property, then in this court's view the word 'property' would have been used consistently throughout s 29 of the Act without using also the words 'anything' or 'thing'. As an illustration, when one reads Chapter XVII of the Penal Code on offences against property, in particular, referring to ss 403 to 411 of the Penal Code on criminal misappropriation of property, criminal breach of trust and receiving stolen property, the word 'property' is consistently used in each of those provisions without any use of other words to refer to that property. Although the word 'property' is not defined under the Penal Code, it has been established by judicial decisions that unless specifically provided (see s 378 on theft of movable property) 'property' includes both corporeal property and incorporeal property including chose in action (see ss 405 and 409 on criminal breach of trust and decided cases for example *Public Prosecutor v Lawrence Tan Hui Seng* [1993] MLJU 657; [1993] 4 CLJ 221, *Gnanasegaran a/l Pararajasingam v Public Prosecutor* [1997] 3 MLJ 1; [1997] 4 CLJ 6, and *Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd Razak* [2020] 11 MLJ 808; [2020] 8 CLJ 319). Notwithstanding that the word 'anything' is found in ss 383 (extortion) and 410 (stolen property) of the Penal Code, those words have specific references within the context of that provision. In s 383 the word 'anything' refers to something that is signed and sealed that can be converted into valuable security, whilst in s 410 'anything' refers to a thing that is acquired by the conversion or exchange of a stolen property. Returning to s 29 of the Act, the words 'anything' and 'thing' must therefore be read in the context of that provision. In this court's view the deliberate use of the words 'anything' and 'thing' apart from the word 'property' in s 29 of the Act, in particular s 29(1) of the Act, were intended to refer to corporeal or tangible property and for that reason s 29(4) of the Act must mean locations where a tangible and moveable property can be found.
>
> [34] Returning to all the charges in the present appeal, since this court holds the view that 'property' under s 29(1) of the Act does not include intangible property such as a chose in action of which monies in a bank constitutes, there cannot be an offence for possession of such property under that provision. The charges were therefore wrongfully brought against the appellant and is therefore illegal.

[31] Pandangan ini telah dikongsikan oleh YA hakim Mahkamah Tinggi dalam kes *Pendakwa Raya lwn Mohd Redzwan bin Md Yatim dan lain-lain* di perenggan [19] seperti berikut:

> [19] Mahkamah ini berpendapat wang RM520 dan RM3,480 dalam akaun berkaitan bukannya 'property' bagi maksud peruntukan s 29 Akta 1955.

Mahkamah ini merujuk kes *Harpajan Kaur a/p Delib Singh v Public Prosecutor* [2021] 7 MLJ 678; [2021] 3 CLJ 704 di mana YA Mohd Radzi Abdul Hamid, Pesuruhjaya Kehakiman ada merungkai isu yang sama dalam penghakimannya seperti berikut: '(3) The plain and ordinary meaning of a 'thing' as a noun refers to an object. If the legislators had intended the word 'property' to include both corporeal and incorporeal property, then the word 'property' would have been used consistently throughout s 29 of the Act without using also the words 'anything' or 'thing'. The deliberate use of the words 'anything' and 'thing' apart from the word 'property' in s 29 of the Act, in particular s 29(1) of the Act, were intended to refer to corporeal or tangible property and, for that reason, s 29(4) of the Act must mean locations where a tangible and moveable property can be found. On the facts, and reading s 29 of the Act as a whole, a chose in action is not a 'thing' that is within the contemplation and scope of 'possession' and 'property' under s 29(1) of the Act (paras 29 & 32).

[32] Sementara itu dalam kes *Mok Chee Cheong v Public Prosecutor* YA Pesuruhjaya Kehakiman dalam kes tersebut telah mengenepikan sabitan di bawah s 29 Akta Kesalahan Kecil 1955 dan mengembalikan kes tersebut kepada mahkamah majistret setelah mendapati bahawa terdapatnya pertuduhan yang tidak teratur tanpa menyentuh kepada pandangan YA hakim dalam kes *Harpajan Kaur a/p Delib Singh v Public Prosecutor* tersebut. Ini adalah disebabkan:

[20] That specific issue is for deliberation in another forum. The matter is pending before the Court of Appeal which concerns the definition of 'anything'. It does not address whether a charge under s 29(1) of the Act is complete and proper without stating the limb of 'reasonably suspected of being stolen or fraudulently obtained'. The said charge which was reproduced in that case also did not specify whether the subject matter of the charge was reasonably suspected of being stolen or fraudulently obtained.

[33] Pihak perayu dalam kes ini telah memaklumkan kepada mahkamah bahawa rayuan dalam kes *Harpajan Kaur a/p Delib Singh v Public Prosecutor* tidak diteruskan. Sementara kes *Mok Chee Kong v Public Prosecutor* tiada rayuan difailkan dan dalam kes *Pendakwa Raya lwn Mohd Redzwan bin Md Yatim dan lain-lain* tidak dapat disahkan sama ada terdapat rayuan.

Isu (b)

[34] Adalah wajar dalam kes ini untuk diteliti peruntukan di bawah s 29 Akta Kesalahan Kecil 1955 yang menyatakan seperti berikut:

29 Fraudulent possession of property

(1) Any person who has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained shall, if he fails

to account satisfactorily how he came by the same, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) If any person charged with having or conveying anything stolen or fraudulently obtained declares that he received the same from some other person, or that he was employed as a carrier, agent or servant to convey the same for some other person, the Magistrate may cause every such other person, and also, if necessary, every former or pretended purchaser or other person through whose possession the same has passed, provided that such other person is alleged to have had possession of the same within the jurisdiction of such Magistrate, to be brought before him and examined, and may examine witnesses upon oath touching the same.

(3) If it appears to such Magistrate that any person so brought before him had possession of such thing and had reasonable cause to believe the same to have been stolen or fraudulently obtained such person shall be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(4) The word 'possession' in subsections (1), (2) and (3) of this section includes possession in a house, building, vehicle, ship, vessel, boat or other place as well as possession in or near a public road or in a public place.

(5) Any person who —

(a) having been convicted of an offence punishable under this section or under Chapter XII or Chapter XVII of the Penal Code; or

(b) having been convicted in the Republic of Singapore of an offence of a nature similar to any of those offences, is subsequently convicted of an offence punishable under this section shall be liable to a fine exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Search for property stolen or fraudulently obtained

(6) If information is given on oath to a Magistrate that there is cause to suspect that any property which may be reasonably suspected of being stolen or fraudulently obtained is within any house, building, ship, vessel, boat or other place, such Magistrate may, by warrant directed to any police officer, cause such house, building, ship, vessel, boat or other place to be entered and searched at any hour of day or night.

(7) The information mentioned in subsection (6) of this section shall describe the property which it is reasonably suspected has been stolen or fraudulently obtained, and shall also describe the house, building, ship, vessel, boat or other place in which such property is suspected to be.

(8) If upon the making of the search any property, such as that described in the information, is found in the house, building, ship, vessel, boat or other place, the police officer making the search or some other police officer shall convey such property before a Magistrate or guard the same on the spot or otherwise dispose thereof in some place of safety.

(9) The police officer making the search or some other police officer may also take into custody and bring before a Magistrate any person in such house, building, ship, vessel, boat or other place in whose possession or under whose control such property is found.

(10) The provisions of sections 59, 64 and 65 of the Criminal Procedure Code [Act 593] shall apply to searches made under this section.

[35] Penelitian kepada kes-kes di atas menunjukkan bahawa terdapat pandangan yang menyatakan wang yang berada dalam akaun seseorang iaitu responden-responden dalam kes ini bukannya harta bagi pemakaian s 29 Akta Kesalahan Kecil 1955. Jika diteliti kepada takrifan wang di bawah undang-undang di United Kingdom dapat dilihat takrifan awal yang diputuskan oleh mahkamah adalah dalam kes *Moss v Hancok* [1899] 2 QB 111 yang menyatakan seperti berikut:

Money as currency, and not as medals, seems to me to have been well defined by Mr Walker in 'Money, Trade, and Industry' (1) as 'that which passes freely from hand to hand throughout the community in final discharge of debts and full payment for commodities, being accepted equally without reference to the character or credit of the person who offers it and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities.

[36] Sementara itu jika ditinjau kepada takrifan 'property' dalam *Black's Law Dictionary* adalah membawa maksud:

1. The right to possess, use, and enjoy a determinate thing (either a tract of land or a chatter); the right of ownership 2. Any external thing over which the rights of possession use, and enjoyment are exercised.

[37] Sementara 'things' pula ditakrifkan seperti berikut:

1. A material object regarded as the subject matter of a right, whether it is a material object or not; any subject matter of ownership within the sphere of proprietary or valuable rights. Things are divided into three categories: (1) things real or immovable, such as land, tenements, and hereditaments, (2) things personal or movable, such as goods and chattels, and (3) things having both real and personal characteristics, such as a title deed and a tenancy for a term. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*).

corporeal thing. The subject matter of corporeal ownership; a material object. — *res corporalis*.

incorporeal thing. The subject matter of incorporeal ownership; any proprietary right apart from the right of full dominion over a material object. — Also termed *res incorpo-ralis*.

2. Anything that is owned by someone as part of that person's estate or property — Also *termed res*; chose.

[38] Perkataan 'chose in action' (hak dalam tindakan) pula bermaksud:

> 1. A proprietary right in personam, such as a debt owed by another person, a share in a joint-stock company, or a claim for damages in tort.
>
> 2. The right to bring an action to recover a debt, money, or thing.
>
> 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit. — Also termed thing in action.

[39] Frasa hak dalam tindakan (*chose in action*) di sisi undang-undang membawa maksud yang diperjelaskan dalam kes *Torkington v Magee* [1902] 2 KB 427 seperti berikut:

> 'Chose in action' is a known legai expression used to describe ali personal rights of property which can only be claimed or enforced by action, and not by taking physical possession. It is an expression large enough to include rights which it can hardly have been intended should be assignable by virtue of the sub-section in question, as, for instance, shares, which can only be transferred as provided by the Companies Acts. It is probably necessary, therefore, to put some limit upon the generality of the words; but I think that the necessary limitation is shewn by the considerations to which I have already referred, and also by the words of sub-s 6 itself. I think the words 'debt or other legal chose in action' mean 'debt or right which the common law looks on as not assignable by reason of its being a chose in action, but which a Court of Equity deals with as being assignable'.

[40] Pada masa yang sama mahkamah juga meneliti keputusan dalam kes *Folley v Hill and others* [1843–60] All ER Rep 16 yang membincangkan berkenaan wang dalam konteks hubungan di antara bank dan pelanggan yang dirumuskan dengan menarik oleh Lord Cottenham LC seperti berikut:

> Money, when paid into a bank, ceases altogether to be the money of the customer; it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The money paid into the banker's is money known by the customer to be placed there for the purpose of being under the control of the banker. It is then the banker's money; he is known to deal with it as his own; be makes what profit of it he can, which profit he retains to himself, paying back only the principal, according to the custom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places. The money placed in the custody of a banker is to all intents and purposes the money of the banker, to do with it as he pleases. He is guilty of no breach of trust in employing it; he is not answerable to the customer if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it or deal with it as the property of the customer, but he is, of course, answerable for the amount, because he has contracted, having received that money, to repay to the customer, when demanded, a sum equivalent to that paid into his hands. That has been the subject of discussion in various cases, and that has been established to be the relative situation of banker and customer. That being established to be the relative situations of banker and customer, the banker is not an agent or factor, but he is a debtor. Then the analogy between that case and those that have been referred

to entirely fails, and the ground upon which those cases have, by analogy to the doctrine of trusteeship, been held to be the subject of the jurisdiction of a court of equity, has no application here, as it appears to me. A

[41] Mahkamah mendapati wang dibincangkan dalam kes tersebut masih juga berkaitan dengan perhubungan di antara bank dan pelanggan. la memberikan kefahaman berkenaan dengan pelanggan yang menyimpan wangnya di dalam sesebuah bank yang terikat dengan prinsip hak dalam tindakan (*chose in action*). Namun dalam kes ini ialah melibatkan pengadu yang dikatakan telah diminta untuk memasukkan sejumlah wang ke dalam akaun responden-responden seperti yang dinyatakan dalam fakta kes di atas. B C

[42] Ini bermakna semasa siasatan dibuat sejumlah wang tersebut telah dimasukkan ke dalam akaun responden-responden oleh pengadu-pengadu atas maklumat daripada pihak ketiga. Oleh itu wang tersebut yang berada di dalam akaun responden-responden adalah sebenarnya bukanlah kepunyaan responden-responden. Apakah ini bermakna bahawa berdasarkan kepada kes *Folley v Hill* tersebut maka pihak bank yang akan dipertanggungjawab di atas sejumlah wang yang bukannya milik responden yang berada dalam akaun yang dikendalikan oleh bank tersebut. Mahkamah berpendapat adalah tidak wajar sedemikian. Ini adalah disebabkan kedudukan wang yang berada dalam akaun seseorang bagi tujuan kesalahan jenayah perlu dibezakan dengan kedudukan wang dalam konteks perhubungan bank dan pelanggannya. Ini dapat dilihat melalui fakta kes yang menunjukkan bahawa wang-wang tersebut telah dimasukkan oleh pengadu kepada akaun responden-responden oleh pihak ketiga. Ia telah menyebabkan pengadu telah mengalami kehilangan salah (*wrongful loss*) dan responden-responden telah mendapatkan sesuatu yang salah (*wrongful gain*) di sisi undang-undang dalam akaun mereka. D E F

[43] Mahkamah perlu berhati-hati dalam mentafsirkan kehendak s 29 Akta Kesalahan Kecil 1955 kerana terdapat peruntukan di bawah s 29(4) Akta tersebut yang menjelaskan makna milikan seperti berikut: G

> (4) The word 'possession' in subsections (1), (2) and (3) of this section *includes* possession in a house, building, vehicle, ship, vessel, boat or other place as well as possession in or near a public road or in a public place. H

[44] Frasa yang digunakan dalam seksyen tersebut ialah 'includes' (termasuk). Adakah ini menunjukkan bahawa s 29 itu terpakai kepada pemilikan objek yang boleh dimiliki secara fizikal seperti yang dinyatakan dalam s 29(4) tersebut. Dalam hal ini mahkamah merujuk kepada bagaimanakah pendekatan dalam mentafsirkan peruntukan undang-undang bertulis yang terdapatnya perkataan includes. Ini dapat dilihat dalam *Maxwell on The Interpretation of Statutes* (12th Ed) oleh P St J Langan di halaman 270 yang menyatakan seperti berikut: I

A Sometimes, however, the word 'include' is used 'in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include'. In other words, the word in
B respect of which 'includes' is used bears both its extended statutory meaning and 'its ordinary, popular, and natural sense whenever that would be properly applicable'.

[45] Ia adalah sejajar dengan keputusan dalam kes *Dilworth v Stamps Comrs* [1899] AC 99 seperti berikut:

C The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word
D 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include,' and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be
E attached to these words or expressions.

[46] Oleh itu mahkamah berpendapat bahawa wang yang dimiliki di dalam akaun responden-responden dalam kes ini adalah termasuk dalam ruang lingkup s 29 Akta Kesalahan Kecil 1955.
F

[47] Dalam konteks ini mahkamah perlu melihat kepada tafsiran kedapatan salah (*wrongful gain*) dan kehilangan salah (*wrongful loss*) dalam Kanun Keseksaan seperti berikut:

G 23 'Wrongful gain' dan 'wrongful loss'

'Wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled.

'Wrongful loss' is the loss by unlawful means of property to which the person losing
H it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

I

[48] Penelitian kepada s 29 Akta Kesalahan Kecil 1955 juga menunjukkan bahawa kesalahan yang dinyatakan ialah kegagalan untuk memberikan penjelasan berkenaan dengan apa-apa yang diperolehi yang tergolong di dalam harta curi atau diperolehi secara tipuan.

[49] Dalam konteks ini mahkamah perlu melihat kepada takrifan harta curi (*stolen property*) di bawah s 410 Kanun Keseksaan seperti berikut:

> 410 Stolen property
>
> (1) Property the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust or cheating has been committed, is designated as 'stolen property', whether the transfer has been made or the misappropriation or breach of trust or cheating has been committed within or without Malaysia. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.
>
> (2) The expression 'stolen property' includes any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

[50] Sementara itu perkataan secara tipuan (*fraudulent*) pula telah ditakrifkan dalam Kanun Keseksaan seperti berikut:

> 25 Fraudulently
>
> A person is said to do a thing fraudulently if he does that thing with intend to defraud, but not otherwise.

[51] Jika diteliti kepada kesalahan yang melibatkan harta curi seperti dinyatakan di bawah s 411 Kanun Keseksaan frasa 'dishonestly' digunakan. Ia dapat dilihat seperti berikut:

> 411 Dishonestly receiving stolen property
>
> Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment for a term which may extend to five years or with fine or with both; and if the stolen property is a motor vehicle or any component part of a motor vehicle as defined in section 379A, shall be punished with imprisonment for a term of not less than six months and not more than five years, and shall also be liable to fine.

[52] Begitu juga bagi kesalahan di bawah s 412 Kanun Keseksaan seperti berikut:

> 412 Dishonestly receiving property stolen in the commissionof a gang-robbery
>
> Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of gang-robbery, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to gang-robbers, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

[53] Frasa curang (*dishonestly*) telah ditakrifkan di bawah Kanun Keseksaan

seperti berikut:

> 24 'Dishonestly'
>
> Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, irrespective of whether the act causes actual wrongful loss or gain, is said to do that thing 'dishonestly'.
>
> Explanation — In relation to the offence of criminal misappropriation or criminal breach of trust it is immaterial whether there was an intention to defraud or to deceive any person.

[54] Begitu juga jika dilihat kepada s 378 Kanun Keseksaan yang memperuntukkan kesalahan mencuri (*theft*) seperti berikut:

> 378 Theft
>
> Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

[55] Adalah jelas dan nyata bahawa penelitian kepada peruntukan-peruntukan yang berkaitan secara tipuan (*fraudulent*) dan curang (*dishonestly*) iaitu s 411, 412, 379 Kanun Keseksaan adalah berkaitan dengan kesalahan yang melibatkan harta. Jika dibandingkan dengan s 29 Akta Kesalahan Kecil 1955 ia menunjukkan bahawa s 29 Akta tersebut ini tidak memerlukan ditunjukkan bahawa tertuduh melakukan perbuatan curang atau penyataan palsu dalam mendapatkan milikan barang-barang tersebut. Apa yang penting ialah barangan tersebut berada di dalam milikan seseorang adalah hasil daripada barang curi atau penyataan palsu. Oleh itu sama ada barang tersebut adalah merupakan wang yang berada dalam akaun atau barang yang boleh dikendalikan secara fizikal tidak mengubah kedudukan s 29 Akta tersebut jika barang tersebut adalah tergolong dalam barang harta curi atau diperolehi secara tipuan.

[56] Adalah jelas dan nyata bahawa apabila pengadu memasukkan wang tersebut ke dalam akaun responden-responden maka pengadu telah mengakibatkan dia kehilangan salah (*wrongful loss*) dan telah memberikan kedapatan salah (*wrongful gain*) kepada responden-responden. Wang tersebut telah secara curang diperolehi oleh responden-responden dalam akaun mereka. Adalah menjadi tanggungjawab mereka untuk menjelaskan kepada mahkamah bagaimana wang tersebut boleh berada di dalam akaun mereka. Pada hemat mahkamah ia sudah memadai untuk maksud s 29 Akta Kesalahan Kecil 1955. Oleh itu tidak timbul sama ada wang dalam akaun tersebut adalah tergolong sebagai harta atau tidak. Ini adalah disebabkan wang tersebut adalah dimiliki secara tipuan berada dalam akaun responden-responden yang menyebabkan pengadu telah mengalami kehilangan salah (*wrongful loss*). Ini pada hemat mahkamah ini sudah memadai bagi memenuhi kehendak s 29 Akta Kesalahan

Kecil 1955. Mahkamah semasa mempertimbangkan kes tersebut wajar meneliti keputusan kes *Arunasalam Thevar v Public Prosecutor* [1956] 1 MLJ 109 di mana YA hakim Thomson menyatakan seperti berikut:

> Now on that there were two questions to be decided one way or the other before there could be any decision as to whether the appellant was to be convicted.
>
> The first of these questions was:
>
> > Was he carrying something that might be reasonably suspected of being stolen?
>
> That was a question to be answered by the Magistrate on a consideration of all the surrounding circumstances.
>
> The second question was:
>
> > If it were something reasonably suspected of being stolen, did he give a satisfactory account of how he came by it?
>
> That, again, was for the magistrate to decide in the light of the circumstances as a whole. And I hope it is unnecessary for me to observe that it was a question for the Magistrate as a reasonable prudent man as to whether or not the explanation given by the appellant, whether it was given to the Police or whether it was given in court to the magistrate himself, was a satisfactory explanation.

[57] Sebagai pelengkap kepada perkara ini mahkamah merujuk kepada keputusan Majlis Privy dalam kes *A-G of Hong Kong v Chan Nai-Keung* [1987] 1 WLR 1339. Dalam kes tersebut Majlis Privy telah memutuskan bahawa kuota pengeksportan adalah termasuk di dalam harta tidak ketara (*intangible property*). Ia dinyatakan seperti berikut:

> In their Lordships' opinion the definition of 'property' in the English Theft Act 1968 and the Hong Kong Theft Ordinance was intended to have the widest ambit. It would be strange indeed if something which is freely bought and sold and which may clearly be the subject of dishonest dealing which deprives the owner of the benefit it confers were not capable of being stolen. Their Lordships have no hesitation in concluding that export quotas in Hong Kong although not 'things in action' are a form of 'other intangible property.

[58] Hal yang sama telah diputuskan dalam kes *R v Preddy and others* [1994] Lexis Citation 3747. Mahkamah Rayuan di United Kingdom melalui penghakiman hakim Farquharson LJ telah menjelaskan sama ada transaksi elektronik yang dikenali sebagai 'CHAPS' adalah boleh dikategorikan sebagai harta dalam konteks s 15 Theft Act 1968. Dalam kes tersebut telah diputuskan seperti berikut:

> The position with regard to telegraphic and CHAPS transfers is more difficult. These are intangible property so the same inferences cannot be drawn. Can they be treated as being analogous to cheques, in the sense that the sum transferred by the movement on the accounts of the lender and the solicitor is to be applied to the purchase of the house? In those circumstances, the asset originally transferred is, and is intended to be, irrecoverable. This is a technical point which only arises because

A of the development in recent years of computer accountancy. It is not always possible to fit modern business methods into a statute, even one passed as recently as 1968. However, we think the Crown's argument is correct. In reality, the funds which were used were those obtained for the purchase of the house, and the Appellants intended that those particular funds would never be returned to the B lenders. In the result it appears to us that the prosecution had proved those aspects of the offence which had been put in issue, and this appeal on those grounds will be dismissed.

[59] Professor JC Smith telah memberikan ulasan yang menarik berkenaan C kes tersebut dalam *Case and Comment* [1995] Crim LR 564 seperti berikut:

> Effectively, the victim's property has been changed into another form and now belongs to the defendant. There is the gain and equivalent loss which is characteristic of, and perhaps the substance of obtaining.

D

[60] Jika takrifan yang ketat berkenaan s 29 Akta Kesalahan Kecil 1955 dibuat dengan memutuskan bahawa wang bukannya harta dan mengambil kira prinsip hubungan pelanggan dan bank yang menjadi asas kepada takrifan wang dalam kes *Folley v Hill* tersebut ia akan bertentangan dengan kepentingan E awam apabila penjenayah boleh menggunakan akaun-akaun individu yang lain untuk dimasukkan wang-wang yang diperolehi secara tipuan atau curang dan tiada sebarang tindakan boleh diambil kepada pemegang akaun tersebut. Ini akan mengembangbiakkan kegiatan jenayah penipuan yang melibatkan akaun bank. Ia perlu diambil kira demi kesejahteraan masyarakat terpelihara di F samping tidak memudaratkan keadilan kepada responden-responden.

Isu (c)

[61] Mahkamah telah meneliti pertuduhan yang dikemukakan kepada G responden-responden dalam kes ini dan mendapati bahawa tarikh kejadian, tempat kejadian, kesalahan yang dilakukan, jumlah yang terlibat dan dinyatakan juga harta-harta tersebut diperolehi secara frod di mana tidak dapat memberikan penjelasan yang munasabah bagaimana wang tersebut berada dalam akaun responden-responden. Ini pada hemat mahkamah sudah H memenuhi kehendak Kanun Tatacara Jenayah berkaitan dengan pertuduhan. Mahkamah ini berpendapat tiada sebarang kecacatan dalam pertuduhan tersebut.

I **[62]** Akhirnya, rayuan perayu dibenarkan. Perintah majistret diketepikan. Kes dikembalikan kepada mahkamah majistret di bawah s 316(a) KTJ.

Rayuan perayu dibenarkan; perintah majistret diketepikan; kes dikembalikan kepada mahkamah majistret di bawah s 316(a) KTJ.

Dilaporkan oleh Dzulqarnain Ab Fatar